

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

- against -

07 CR 421 (NG) (JMA)

**ODINI HEMMINGS and
KEVIN PHILLIPS,**

Defendants.

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GERSHON, United States District Judge:

At the June 29, 2009, final pre-trial conference defendant Odini Hemmings made an application to exclude alleged post-arrest statements of Hemmings memorialized in an F.B.I. report dated May 29, 2007, based upon the government's failure to timely produce this material pursuant to Rule 16 of the Federal Rules of Criminal Procedure. The government concedes the statements were within its possession and, indeed, that the AUSA initially assigned to this case was aware of them. The government has offered no justification for why the statements were not disclosed until the eve of trial. Production of inculpatory statements at this late date violates Rule 16. Defendant's application to exclude the post-arrest statements of Odini Hemmings which are the subject of the May 29, 2007 report is granted. See Fed. R. Crim. P. 16(d)(2)(C); United States v. Salameh, 152 F.3d 88, 130 (2d Cir. 1998).

SO ORDERED.

/s/ Nina Gershon
NINA GERSHON
United States District Judge

Dated: Brooklyn, New York
June 30, 2009